



March 29, 2000

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2000-1211

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133513.

The Texas Department of Insurance (the "department") received a request for certain information submitted to the department by Forethought Life Assurance Company and Homesteader's Life Company.<sup>1</sup> You do not raise any exceptions against disclosure of the responsive information on behalf of the department; however, you inform our office that the responsive information may implicate the proprietary or property interests of third parties. Therefore, you claim that the responsive information may be excepted from disclosure under section 552.110 of the Government Code.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. You acknowledge that you did not request a decision within ten business days and thus failed to meet your statutory burden. Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd.*

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<sup>1</sup>You inform this office that the department does not have any responsive information for Homesteader's Life Company. We note, however, that you have submitted to this office as responsive documents relating to Southwest Training Schools. We therefore assume that the submitted documents relating to Southwest Training Schools are responsive to this request. *See generally* Gov't Code § 552.301.

*of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision Nos. 552 (1990), 319 (1982), 150 (1977). Here, we agree that the application of section 552.110 and the interests of third parties present compelling reasons to overcome the presumption of openness.

Section 552.305 of the Government Code provides that if release of a third party's proprietary information may be subject to exception under section 552.110, a governmental body must make a good faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 at 2-3 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). In this instance, you inform us that the department provided the notice required by section 552.305(d) to Forethought Life Assurance Company and Southwest Training Schools, Inc. These companies had ten business days in which to submit to this office arguments for withholding or releasing the submitted information. *See* Gov't Code § 552.305(d)(2)(B). However, these companies have not submitted to this office any arguments as required by section 552.305(d). Therefore, we have no basis to conclude that the responsive information is excepted from disclosure by section 552.110. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that you must release the responsive documents to the requestor.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>2</sup>We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel  
Assistant Attorney General  
Open Records Division

KSK/ljp

Ref: ID# 133513

Encl. Submitted documents

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(w/o enclosures)